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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,684	10/27/2003	Tetsuya Suga	242791US0CONT	2064
22850 7590 07/31/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER GEORGE, KONATA M	
			ART UNIT	PAPER NUMBER
			1616	
			NOTIFICATION DATE	DELIVERY MODE
			07/31/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## Office Action Summary

**Application No.**

10/692,684

**Applicant(s)**

SUGA ET AL.

**Examiner**

Konata M. George

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5,6,11-36,38-46 and 48-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,11-36,38-46 and 48-90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/7/06</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1, 5, 6, 11-36, 38-46 and 48-90 are pending in this application.

#### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on August 7, 2006 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement.

#### ***Action Summary***

2. The examiner acknowledges the cancellation of claims 2-4, 7-10, 37 and 47. Therefore, any and all rejections and/or objections directed towards them are hereby withdrawn.
3. The rejection of claim 22 under 35 U.S.C. 112, second paragraph as being indefinite is being maintained for the reasons stated in the office action dated March 8, 2006.
4. The rejection of claims 1, 5, 6, 11-14, 18, 19, 21-24, 26-28, 31, 32, 35, 38, 40 and 41 under 35 U.S.C. 102(b) as being anticipated over Kropf et al. is hereby withdrawn as applicant has amended the claims to overcome the rejection.
5. The rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated over Jamas et al. is hereby withdrawn as applicant has amended the claims to overcome the rejection.

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6. The rejection of claims 1, 15-17, 27, 28, 36, 42 and 44 under 35 U.S.C. 102(b) as being anticipated over Kobayashi et al. is hereby withdrawn as applicant has amended the claims to overcome the rejection.
7. The rejection of claims 1, 5, 6, 11-13, 26-28, 31-33, 36, 40, 42, 45, 46, 48 and 50 under 35 U.S.C. 102(e) as being anticipated over Ostroff et al. is hereby withdrawn as applicant has filed a translated copy of the priority document therefore, overcoming the filing date.
8. The rejection of claims 1 and 26 under 35 U.S.C. 102(e) as being anticipated over Sandewicz et al. is hereby withdrawn as applicant has filed a translated copy of the priority document therefore, overcoming the filing date.
9. The rejection of claims 6, 26-36, 38, 42, 43 and 48-51 under 35 U.S.C. 103(a) over Jamas et al. is hereby withdrawn as applicant has amended the claims to overcome the rejection.
10. The rejection of claims 20 and 25 under 35 U.S.C. 103(a) over Jamas et al. is hereby withdrawn as applicant has amended the claims to overcome the rejection.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claims 1, 5, 6, 11-36, 38-46 and 48-90 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for beta glucan derived from

water extraction of a mushroom, does not reasonably provide enablement for all other extracts that may be obtained from a water extraction of mushrooms. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 22 and 61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 22 and 61 it is unclear as to what is meant by "(1)" after the whole sugar.

### ***Conclusion***

13. Claims 1, 5, 6, 11-36, 38-46 and 48-90 are rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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### ***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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